"It may be regarded as settled in most jurisdictions that a present apparent ability to inflict a battery is sufficient to render an assault criminal, and that actual ability is not necessary." CLARK AND MARSHALL, THE LAW OF CRIMES, § 206. If a well-founded apprehension of a battery is created in the mind of the person against whom the act is directed, it has usually been held that the assault is complete. See 3 CYC. 1025, and cases there cited. In the principal case the court held that the defendant had neither the actual nor the apparent ability to inflict harm upon H, for the reason that when H first saw the defendant, the defendant had been covered by W's gun and rendered completely harmless, and that since H was not put in fear and had no apprehensions as to his safety, no assault had been committed. SMITH, J., in a convincing dissenting opinion, said, "I do not think the apprehension of a battery is necessarily confined to the person toward whom the weapon is directed. Such apprehension may be excited in the breast of a third person as was the case here." Judge SMITH intimates that an act creating such an apprehension in the mind of a third party is as provocative of a breach of the peace as if it had created the apprehension in the mind of the person against whom the act was directed. Neither the Court nor the dissenting Judge cited cases directly on this point, and none have been found.

BANKRUPTCY—MARSHALING ASSETS OF PARTNERSHIP AND OF CONSTITUENT FIRM.—The firm of K. & Co., doing business in Pennsylvania, was there adjudicated bankrupt; it was composed of one individual and the firm of A. & K. doing business in Massachusetts. The firm of A. & K. assigned for the benefit of its creditors under the Massachusetts statute, and the assignee, after liquidating the assets, turned over the proceeds to the trustee in bankruptcy of K. & Co. The creditors of A. & K. claim priority as to this fund, and the creditors of K. & Co. claim to share *pari passu* with the creditors of A. & K. *Held,* the creditors of A. & K. are entitled to priority. *In re Knowlton & Co.* (D. C. Pa. 1912) 196 Fed. 837.

Except for the ruling of Lord THURLOW, who permitted joint creditors to share *pari passu* in the separate estate with separate creditors (*Ex parte Cobham,* 1 Bro. Ch. 576; *Ex parte Hodgson,* 2 Bro. Ch. 5; *Ex parte Page,* 2 Bro. Ch. 119; *Ex parte Flintum,* 2 Bro. Ch. 120), the rule in Chancery has been uniform in settling estates of bankrupt partnerships, that "the joint creditors take the joint estate, and the separate creditors the separate estate" and only the surplus that may remain of either estate is subject to the claims of the other class of creditors. *Ex parte Crowder,* 2 Ves. 706; *Ex parte Cook,* 2 P. Wms. 500; *Ex parte Elton,* 3 Ves. 238; *Ex parte Clay,* 6 Ves. 813; *In re Rowland and Crankshaw,* 1 Ch. App. 421; *Ex parte Hayman* (*In re Pulsford*), L. R. (1878) 8 Ch. Div. 11. To this extent the partnership was considered as an "entity" distinct from its members. The Bankruptcy Act, 1898, § 5 f is merely declaratory of this pre-existing rule of equity. *Buckingham* v. *First National Bank,* 131 Fed. 192; *Sargent* v. *Blake,* 160 Fed. 57. The principal case is novel under the present Bankruptcy law because of its facts. In reaching its decision the court held that the firm of A. & K., as well as the firm of K. & Co., must be considered in the nature of a legal entity.

Whatever may be the state of the law in general as to the entity theory of partnerships (see 10 MICH. L. REV. 578), this conclusion seems in accord with the authorities which hold that where two partnerships, or an individual and a partnership, form a conjoint partnership, there is no rule of law to prevent the partnership as such, becoming a distinct member of the new firm, provided the parties to the contract so intend it. *Meador* v. *Hughes,* 14 Bush. (Ky.) 652; *Bullock* v. *Hubbard,* 23 Cal. 496; *Meyer* v. *Krohn,* 114 Ill. 574; *Willson* v. *Morse,* 117 Ia. 581; *Raymond* v. *Putnam,* 44 N. H. 160; *In re Gilbert,* 94 Wis. 108; *In re Hamilton,* 1 Fed. 800. With this point decided, the application of the statute to the facts is clear. The court arrives at the same conclusion as the Wisconsin court did under the State insolvency procedure in *In re Gilbert, supra.*

BANKS AND BANKING—CHECKS—FICTITIOUS PAYEE.—Plaintiff drew a check in favor of E. Crawford, who was thought to be a real person, but who was in fact merely fictitious. The check was obtained by one Weil, who forged the name of E. Crawford on the back thereof and cashed it at the defendant bank. *Held,* the payment was not binding on the drawer and was made at the peril of the bank. *Guaranty State Bank & Trust Co.* v. *Lively* (Texas 1912) 149 S. W. 211.

Under the NEGOTIABLE INSTRUMENTS LAW paper payable to a fictitious or non-existing person is not payable to bearer unless the maker or drawer knew that the payee was a fictitious or non-existing person. *Shipman* v. *Bank of State of New York,* 126 N. Y. 318. Under the English statute paper payable to a fictitious or non-existing person is payable to bearer, irrespective of the element of knowledge on the part of the maker or drawer. BILLS OF EXCHANGE ACT, § 7 (3). The weight of authority is in accord with the Negotiable Instruments Law. *First Nat. Bank* v. *Farmers' Bank,* 56 Neb. 149; *Armstrong* v. *Bank,* 46 Ohio St. 512; *Chism* v. *Bank,* 96 Tenn. 641. A bank is bound at its peril to ascertain the genuineness of an indorsement, and if it pays a check on a forged indorsement it acquires no rights against the drawer, and cannot charge to his account the amount so paid out. *Hatton* v. *Holmes,* 97 Cal. 208; *Williams* v. *Drexel,* 14 Md. 566. An indorsement by a person bearing the same name as the payee, but not the real person, is a forgery, and payment to him will not excuse the bank from paying the true owner of the paper. *Graves* v. *American Exch. Bank,* 17 N. Y. 205; *Indiana Nat. Bank* v. *Holtsclaw,* 98 Ind. 85.

BILLS AND NOTES—BONA FIDE HOLDER.—Plaintiff became the indorsee of a check with knowledge that the drawer had no funds on deposit to pay it, and under request by the indorser, at the instance of the drawer, to delay presentment. *Held,* that such knowledge did not deprive the plaintiff of the rights of a *bona fide* holder, especially since he had previously received checks from the same parties under the same circumstances which had been paid upon presentment. *Johnson* v. *Harrison* (Ind. 1912) 97 N. E. 930.

After various changes and considerable indefiniteness in the rule as to just when the acquisition of negotiable instruments may be said to be with-